THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12767 OF 2002

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18th August, 2005

Between:

1. Chandrakanth H.Shah s/o H.D. Shah,

aged about 68 years.

2. Kanthilal lH.Shah s/o H.D. Shah,

aged about 63 years,

3. Dilip Kumar H. Shah s/o H.D. Shah,

aged about 55 years.

(All are r/o H.No. 40/323, Bellary Road,Kurnool-1)

…Petitioners.

A N D

1. The Revenue Divisional Officer, (Land Reforms Tribunal), Kurnool and Others. …Respondents.

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W.P.No. 12767 OF 2002

ORDER:

1. This writ petition has been filed by the petitioners who are three in number with a prayer to issue a writ of mandamus or appropriate writ or direction declaring the action of the respondents in acting upon the offer of surrender statement dated 29-12-1978 at this distance of time without considering their representation dated 8-4-

2002, where under a request for substitution of the lands to be surrendered towards excess holding has been made, is arbitrary and illegal and to direct the respondents to accept the surrender of lands as suggested by the petitioners in their representation dated 8-4-2002.

2. The facts of the case in brief are :-

The petitioners are brothers and are sons of Shah Hemchand Devchand. They along with their father filed declarations under Section 8 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (herein after referred to as A.P.L.R.Act, for brevity) on 11-4-1975. After issuing notice in Form No. 5 the Land Reforms Tribunal, Kurnool, took up their case for final hearing on 27-11-1976. They raised objections for inclusion of certain lands in their holding. The Tribunal passed orders on 30-11-1976 holding that each of the declarants hold land equallant to 0.2669 standard holding in excess of ceiling limit. Subsequently, the declarants filed petition before the Land Reforms Tribunal at Kurnool for deletion of certain lands from their holding in view of the Government issuing notification under Section 4(1) of the Land Acquisition Act for acquisition of certain lands for RTC Bus Station. The Tribunal by orders dated 30-11-1976/15-1-1977 ordered for deletion of those lands covered under Section 4(1) notification from the holding of the declarants. The Special Tahsildar, Land Reforms, Kurnool challenged the orders of the Land Reforms Tribunal passed on 30-11-1976 and 15-1-1977 by filing the appeals before the Land Reforms Appellate Tribunal, Kurnool. Both the appeals being L.R.A. No.171/1977 and 786 of 1977 came to be allowed on 8-11-1977 and the excess holding of each of the declarants came to be determined as 0.3788 standard holding. The declarants carried the matter in revision in C.R.P.Nos.25 and 26 of 1978. Both the C.R.Ps ended in dismissal on 9-6-1978 confirming the order of the Land Reforms Appellate Tribunal. The declarants filed I.A.No.68 of 1979 before the Land Reforms Tribunal, Kurnool, seeking for re-computation of certain single crop wet lands as dry lands and there after revision of excess land to be surrendered by them The said petitions ended in dismissal. The declarants carried the matter in appeal being L.R.No.241 of 1979 on the file of the Land Reforms Appellate Tribunal, Kurnool. The said appeal ended in dismissal on 15-7-1980. They filed C.R.P. assailing the orders passed by the Land Reforms Appellate Tribunal in L.R.No.241 of 1979. C.R.P.No.2092 of 1981 ended in dismissal on 13-9-1982. The declarants submitted statement on 29-12-1978 proposing the following lands to be surrendered

towards their excess holdings. The lands proposed are as follows:

Name of the Survey No. Classi- Extent S.H.

Village fication

Kalluru 79 Part

Southern side Dry-J 12-00 0-200

Kalluru 95/1, 95/3 & 95/5,

105/1, 105/3 and 105/5 wet-E 9-14 0-4062

Full

Planchalingala 33-A Dry-J 7-82 0-2861

Full Dry-J 9-35

33-B

Panchalingala 17,13,15 Dry-J 32-25 0-5414

Panchalingala 361/A Dry-J 2-31 0-0385

Panchalingala 133 (Part) Dry-J 2-72 0-0430

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Total : 75-60 1-5152

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3. The Tribunal accepted surrender of those lands and issued notice in Form No. 8 dated10-2-1979 inviting objections from the public at large for accepting those lands. Since no objections were received from any quarter, the Tribunal approved surrender of lands proposed by the declarant by order dated 20-7-1979 under Section 10(3) of the Act. The Tribunal issued Form No. 9 directing the authorized Officer to take possession of the lands surrendered which have been approved by the Tribunal. The Authorised Officer took possession of the land on 27-8-1980. The

lands detailed in Form N. 10 certificate for taking possession are:

Taluk/Village	S.No. S.D.No.	Wet or Dry	Extent	Name of the persons from whom possession of the land has been taken
(1)	(2)	(3)	(4)	(5)
Kurnool Kallur	79/1	Dry	12-00	Hemchand Deva chand
	95/1B	"	0-25	
	95/3	"	3-28	
	95/5	"	0-04	
	105/IB	"	0-56	
	105/3	"	2-09	
	105/5	"	2-92	
Panchalingola	33/A	"	7-82	
	33/B	"	9-35	
	17/1	"	4-30	
	13	"	11-09	
	15	"	16-96	
	361/A2	"	2-31	
	133/IB		2-72	

			75-69	

4. The original Form 10 contains the signatures of the witnesses in whose presence

the lands have been taken possession by the Authorized Officers. The records discloses that Form NO.9 has been served on the declarants on 8-10-1979 vide photo state copy of Form No. 9 filed along with material papers by the respondents While so, the petitioners submitted a representation to the Revenue Divisional Officer, Kurnool-1st respondent to permit them to change the lands to be surrendered towards excess holding. For better appreciation, I deem it appropriate to extract the text of the letter-representation dated 8-4-2002 and it is thus:

"*To*

The Revenue Divisional Officer,

Kurnool.

Sir,

Sub: A.P.L.R. (Coal) Act, 1973 – Kurnool District – Request for alternating of surplus lands – surrendered by the petitioners-Reg.

In the proceedings NO. LRA No. 171/77 and 786/77 dated 8-11-1977, the Land Reforms Appellate Tribunal, Kurnool had decided that we hold lands to the extent of 1.5152 SH in excess of ceiling. We were asked to surrender surplus lands upto this extent.

In our letter dated 29-12-1978, (copy enclosed), we surrendered some of our lands in Kallur and Panchalingala villages measuring to 1.5152 SH. The matter rested there. We are not aware whether these lands have been taken possession of, by the concerned authorities, as some notices prescribed under the Act and Rules to be served on us have not been served. These lands continue to be in our possession and enjoyment till today.

All of a sudden, we have come to know that the Mandal Revenue Officer, Kurnool in his letter Rc.(E)261/2002, dated 2-3-2002 addressed to the Mandal Revenue Inspector-II, Kurnool has informed that the surrendered lands in Panchalingala village will be assigned to landless poor shortly. It is likely that Mandal Revenue Officer, Kallur may also take similar action in respect of the surrendered lands of Kallur village. IN this connection, we submit that, as the surrendered lands are in our possession and enjoyment till

today, some developments have taken place in respect of some of the surrendered lands as indicated below during the last 24 years.

We have constructed a Dall Mill in Sy.No. 95/1, 3,5 and 105/1, 3,5 of Kallur village and are running the industry since last 6 years. We have sold the following lands in Panchalingala village.

Sy.No. 13,15,17 32.48 Acres

Sy.No. 361/A 2.31 Acres.

In view of these developments, we re not in a position now to hand over possession of the above lands.

As a law abiding citizens, we are still prepared to comply with the orders of the Land Reformes Appellate Tribunal and surrender alternatie lands to the extent of 1.5152 SH as decided by the Tribunal.

We only request you to permit us to change the lands covered by the above developments and hand over the following alternate lands.

Village Sy.No. Classification Extent SH

Kallur 95/1,3,5 Wet 4.69 0.2086

105/1,3,5 on

the Western side

Panchalingala 170 Wet 16050 Ac. 0.6600

171. *Wet-C 7.21 Ac. 0.3605*

33/A Dry-J 7.82 Ac. 0.3605

33/B Dry-J 9.35 Ac. 0.2861

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1.5152

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We request you to sympathetically consider our difficulties in surrendering some of the surplus lands offered earlier, and permit us to hand over the above alternate lands upto the extent of 1.5152 SH.

We also request you to instruct the Mandal Revenue Officer

Kurnool and Kallu to keep in abeyance further action in assigning the land to the landless poor.

Thanking you,

Yours faithfully,

For HEMCHAND DEEVCHAND AND OTHERS.

(KANTILAL H. SHAH)"

5. The Mandal Revenue Officer, Kurnool-2nd respondent issued memo dated 2-9-2002 to the Mandal Revenue Inspector to take possession of the lands surrounded by the declaration on 29-12-1978 immediately and if there is any standing crop in any one of the fields, take possession of the same immediately after harvesting. Since, the declarants name continues to be appeared in the pattedar and enjoyer column i.e. Column Nos. 12 and 13 in No.2 Adangal, the Mandal Revenue Officer, Kurnool directed the Mandal Revenue Inspector to take possession of the lands immediately and prepare the beneficiaries list caste wise and submit the same within seven days. The petitioners-declarants asserting their possession over the lands proposed to be surrender in the year 1978 (29-12-1978) have filed writ petition seeking direction to the respondents to accept the lands proposed by them in their letter dated 8-4-2002 towards their excess holding instead of the lands proposed to be surrendered in the year 1978 (29-12-1978) .

6. The 2nd petitioner has given his sworn affidavit in support of the writ petition. It is stated in the affidavit that they are under the impression that the lands proposed by them in their letter dated 29-12-1978 have not been approved and therefore, they continued to be in possession of the lands. It is further stated in the affidavit that the Mandal Revenue Officer has issued pattedar pass-books and title deeds to them under the provisions of A.P.Record of Rights in Land and Pattedar Pass-books Act, 1971 in respect of the very same lands. It is also stated in the writ affidavit that they have developed the lands which they proposed to surrender on 29-12-1978 and some of the lands have been sold and therefore, it is impracticable for them to deliver the possession of the land which they proposed to surrender in their

statement dated 29-12-1978. I deem it appropriate to refer para 3 of the writ affidavit and it is thus:-

> *"Whileso, in the month of March, 2002 we came to know that the 1st respondent has instructed respondents 2 and 3 to take possession of the lands in Sy.Nos. 33/A, 33/B, 17/1, 13,15,361/A2 and 133/1B, totally admeasuring Ac. 54.55 acres from us, purportedly on the basis of our surrender letter dated 29-12-1978. When we came to know about the possible dispossession, we have submitted a representation dated 8-4-2002 stating that since possession of the lands which were offered for surrender vide our letter dated 29-12-1978 has not taken, we have developed the said lands in view of the fact that we were issued pattadar pass books and title deeds in respect of those lands and since we have constructed a Dall Mill in Sy.Nos. 95/1, 3,5 and 105/1,3,5 of Kallur village and since we have sold the land in Sy.Nos. 13,15,17 and 361/A of Panchalingala village, we may be permitted to substitute the lands to be surrendered by the other lands as enumerated in the said representation dated 8-4-2002. The 1st respondent, having acknowledged the receipt of the said representation, did not intimate any thing to us about grant or rejection of our request for substitution of the lands for surrender, so that the total surplus holding is kept at the disposal of the state. However, it is reliable understood that respondents 2 and 3 are preparing the list of beneficiaries for assignment of lands as per surrender letter dated 29-12-1978. Hence, we are under an imminent threat of being dispossessed from the lands which we have developed by investing substantial expendidture".*

7. The respondents filed counter affidavit. One Smt. C. Nagarani has sworn to the counter affidavit. It is stated in the counter affidavit that on receipt of the surrender of the proposal from the declarants, the Land Reforms Tribunal, Kurnool published Form No. 8 and passed 10(3) orders on 20-7-1979 which the declarants challenged by filing an appeal before the land Reforms Appellate Tribunal, Kurnool. The appeal filed by them ended in dismissal. It is further stated in the counter affidavit that the declarants having violated the provisions of the A.P.L.R. Act, cannot be permitted to substitute some others lands to the lands already surrendered by them. The Mandal Revenue Officer prepared the beneficiaries list for assignment of the lands as per surrender letter dated 20-9-1978. Since 10(3) orders became final and lands already taken possession on 27-8-1980, the writ petition is devoid of merits and the same is

liable to be dismissed. It is also asserted in the counter affidavit that the Land Reforms Tribunal, Kurnool on the basis of 10(3) orders, which have become final, has already taken possession of the lands on 27-8-1980.

8. Heard the learned counsel for the petitioners and learned Government Pleader for Revenue appearing for respondents.

9. The learned counsel for the petitioners submits that the respondents have not taken any action on the statement/application dated 29-12-1978 submitted by the petitioners proposing the land to be surrendered towards excess holding and since sufficient period has been elapsed by now, the petitioners have got every right to surrender some other lands in substitution of lands already proposed. He further submits that since some of the lands proposed to be surrendered as per statement dated 29-12-1978 have been alienated and the some of the lands have been developed, it has become impracticable for the petitioners to surrender the lands proposed by them in the statement/petition dated 29-12-1979 and therefore, they proposed alternative lands in their representation dated 8-4-2002. He strenuously contended that dispossessing the petitioners from the lands which they proposed to surrender after 26 years is in violation of principles of natural justice. He would further contend that the authorities have slept over the matter for more than 26 years in approving the lands proposed by the petitioners, and therefore the authorities cannot be permitted to resort to dispossess the petitioners from the lands at this distance of time. In support of his submission, he placed reliance ***Ramchand Vs. Union of India*** .

10. The learned Government Pleader for Revenue appearing for the respondents submits that the surrender of lands proposed by the petitioners in their letter dated 29-12-1978 have been approved by the Tribunal and 10(3) orders came to be passed on 20-7-1979 and the order passed in 10(3) of the Act came to be served on the petitioners and therefore, the petitioners cannot be permitted to contend that the lands proposed by them in their statement dated 29-12-1978 have not been approved by the Tribunal. He further contends that it is the petitioners who dragged on the matter for nearly two decades by approaching various forums and obtaining interim orders. Therefore, he cannot be permitted to take the plea that the lands proposed to be surrendered by them have been developed and some of the lands have been alienated.

11. I have gone through the material placed on record meticulously. It is heart burning to note though the declarants found to be holding lands excess over the ceiling limit in the year 1976 i.e. more precisely on 30-11-1976, the petitioners-declarants were allowed to be in possession of the excess lands even after conclusion of the proceedings in the High Court in the year 1981 itself i.e. C.R.P.No.2092 of 1981. The Lands Reforms Appellate Tribunal by order dated 8-11-1977 in land Reforms Appeal Nos. 171/77, 786/77 re-determine the excess holding of the declarants and found that each of the declarants was holding 0.3788 standard holding over the ceiling limit. The petitioners-declarants tried to save the lands at every stage by taking all sorts of pleas. The please taken by them were turned down by the Appellate Tribunal as well as this Court. The Land Ceiling Proceedings reached finality in the year 1981 itself. The Tribunal accepted the land proposed by the petitioners-declarants and issued 10(3) orders approving the surrender of the proposed lands. The copy of the order has been served on the petitioners-declarants on 8-10-1979. Therefore, the petitioners declarant cannot be permitted to contend that the land proposed by them in the statement dated 20-9-1978 have not been approved by the Tribunal. Once the Tribunal approved the lands proposed by the petitioners-declarants towards excess holding and the Authorized Officer has taken possession of the land and issued certificate for taking possession, the petitioners-declarants cannot be permitted to contend that they continued to be in possession of the lands and therefore, they are entitled to propose some other lands towards their excess holdings in place of the land proposed by them under the statement dated 29-12-1978.

12. This is a classic case as to how a person in possession of the property over the ceiling limit makes all sorts of efforts to defeat the very object of the A.P.L.R. Act. I tempted to comment on the function of the Officers concerned, but the learned Government Pleader for Revenue appearing for the respondents pleads that the Officers concerned could not proceed further in the matter because of the interim orders secured by the petitioners-declarants from time to time. Leaving the matter here, it is for the authority concerned to examine the records very minutely and see some steps are taken on the erring Officer to torn up the administration to implement the Land Ceiling Act in letter and spirit.

13. The Writ Petition is devoid of merits and the same is hereby dismissed with costs.

B.Seshasayana Reddy,J

18th August, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12767 OF 2002

18th August, 2005.

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